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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF CALIFORNIA

In the Matter of

KLARA JEAN BERGTHOLDT and
 ERIC DOUGLAS WILLIAMS,

Debtors.

JAMES E. SALVEN, CHAPTER 7
 TRUSTEE,

Plaintiff,

vs.

MITRA LYONS,

Defendant.

Case No. 02-13531-B-7F
 Chapter 7

Adv. No. 06-01185-B-7F
 DC: DRJ-2

Date: March 29, 2007

Time: 11:00 a.m.

Department B, Judge Lee
 2500 Tulare Street, Fifth Floor
 Courtroom 12, Fresno, CA

**FINDINGS OF FACT AND CONCLUSIONS OF LAW ON
 PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

1. Introduction. Plaintiff's complaint seeks to recover from Defendant the sum of \$8,166.00, based on two theories. First, Plaintiff contends that the \$8,166.00, received by the Defendant from the sale of the Debtors' residence is property of the bankruptcy estate herein that the Plaintiff, as Chapter 7 Trustee, is entitled to possess. Second, Plaintiff contends that the payment of the sum of \$8,166.00, to the Defendant constituted an unauthorized transfer of property of the estate that the Plaintiff is entitled to avoid. For the reasons set forth hereinafter, the Court finds that there are

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1 no disputed factual issues regarding either claim and the Plaintiff is entitled to a money
2 judgment in the amount of \$8,166.00, as a matter of law.

3 **2. Findings of Fact.**

4 A. The above captioned Chapter 7 case was commenced by the
5 filing of a voluntary petition for relief under Title 11 U.S.C. Chapter 13 on April 17,
6 2002. The case was converted to a case under Chapter 7 at the request of the Debtors on
7 March 9, 2004.

8 B. Plaintiff is the duly appointed, qualified and acting Chapter 7
9 Trustee herein.

10 C. On April 17, 2002, Klara Jean Bergtholdt and Eric Douglas
11 Williams (hereinafter "Debtors") were the owners of that certain parcel of real property
12 improved with a single family residence that is located at and commonly known as 3616
13 East Oak Court, Visalia, California. (Hereinafter, "The Subject Real Property").

14 D. On, or about June 30, 2004, the Debtors transferred the Subject
15 Real Property to Michael Luu and Trang Ha. The Debtors neither sought nor obtained
16 Bankruptcy Court approval for such transfer.

17 E. Defendant Mitra Lyons acted as the listing broker in connection
18 with the sale of the Subject Real Property by the Debtors to Michael Luu and Trang Ha.

19 F. Defendant Mitra Lyons received a real estate commission in the
20 amount of \$8,166.00, from the proceeds of the Debtors' sale of the Subject Real
21 Property to Michael Luu and Trang Ha.

22 G. At the time of the Debtors' sale of the Subject Real Property to
23 Michael Luu and Trang Ha Defendant Mitra Lyons had actual knowledge of the filing
24 of the Debtors' bankruptcy petition.

25 **3. Elements of the Plaintiff's Claims.**

26 A. Turnover of Property of the Estate. With exceptions not
27 applicable here, Title 11 U.S.C. Section 542(a), requires any entity in possession during
28 the case of property that the Trustee may use, sell or lease under Title 11 U.S.C. Section

1 363, to deliver such property to the Trustee. Section 363 permits the Trustee to use, sell
 2 or lease property of the estate. Property of the estate is defined by Title 11 U.S.C.
 3 Section 541 and includes "all legal or equitable interests of the of the debtor in property
 4 as of the commencement of the case." Property of the estate includes proceeds of or
 5 from property of the estate. Title 11 U.S.C. Section 541(a)(6).

6 B. Avoidance of Unauthorized Post Petition Transfers. Title 11
 7 U.S.C. Section 549 permits a Trustee to avoid a transfer of property of the estate, that
 8 occurs after the commencement of the case, and that is not authorized by the Code or the
 9 Court.

10 **4. Conclusions of Law.**

11 A. Plaintiff's Section 542 Claim. Based on the undisputed facts, it
 12 is clear that the Defendant received \$8,166.00, in proceeds from the Debtors' sale of
 13 property of the estate. Since those proceeds are also property of the estate, the
 14 Defendant has received \$8,166.00, in property of the estate. The Plaintiff is entitled to
 15 judgment, as a matter of law, compelling the Defendant to turnover the \$8,166.00, in
 16 property of the estate that she received.

17 B. Plaintiff's Section 549 Claim. As an alternative basis for entry
 18 of judgment in favor of the Plaintiff, based on the undisputed facts, it is also clear that
 19 the Debtors, through the escrow on their sale of property of the estate, transferred
 20 \$8,166.00 in sales proceeds to the Defendant. Such proceeds were property of the
 21 estate. The transfer occurred on, or about, June 30, 2004 and, in any event, after the
 22 commencement of the case in April 2002. The transfer was not authorized by any
 23 provision of the Code or by any order of the Court. The Plaintiff is entitled to judgment,
 24 as a matter of law, avoiding the transfer and awarding a money judgment for \$8,166.00.

25 Dated: 3-30-07



26
 27 W. Richard Lee
 28 United States Bankruptcy Judge